

REMARKS

In the amendments above, Claims 1, 12, and 24 have been amended, and Claim 11 has been cancelled, to more particularly point out and distinctly claim Applicants' invention.

The Examiner has repeated the restriction requirement. Applicants confirm the election of the claims of Group I, namely, Claims 1-23.

Claims 1-25 have been provisionally rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-23 and 25-27 of co-pending U.S. Patent Application No. 10/563,886 in view of Bergersen, U.S. Patent No. 4,784,605 ("Bergersen I"). Applicants do not necessarily agree with the Examiner regarding the basis of this rejection. However, Applicants would certainly be willing to consider an appropriate response in the event that the claims of the co-pending application are patented.

The drawings have been objected to. The Examiner's attention is directed to the attached replacement drawings of Figures 1 to 5b.

The Examiner has objected to the abstract and the specification. The Examiner's attention is directed to the amendments above, which are believed to overcome these objections.

Claims 1-24 have been objected to and have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner's attention is directed to the amendments above, which are believed to overcome this objection and rejection.

Claims 1-6 have been rejected under 35 U.S.C. 102(b) as being anticipated by Bergersen I, and Claims 7-9 and 18-23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen I as applied to Claim 1 above, and further in view of Bergersen, U.S. Patent No. 5,645,420 ("Bergersen II"). The Examiner maintains that it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to have provided a varying

thickness of the isthmus of the device as taught by Bergersen II to the orthodontic device of Bergersen I to correct open/bite/overbite problems.

Claims 10-17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen I as applied to Claim 1 above, and further in view of DeLuke, U.S. Patent No. 6,837,246 ("DeLuke"). The Examiner maintains that it would have been obvious to a person of ordinary skill in the art to reduce the wing at the point of the ligament of the tongue to maintain the appliance in the mouth and that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the wing of DeLuke to the dental appliance of Bergersen I for enhancing retention of the appliance in the user's mouth and to encourage users to breath through the nose, and which can serve as a diagnostic aid or test device to access a patient's problems.

Applicants respectfully traverse each of the above rejections.

With regard to Bergersen I, it should be appreciated that this reference does not teach or suggest Applicants' invention. For example, among other deficiencies of Bergersen I, it does not disclose a "lower wing" or a functional equivalent. The Examiner's attention is directed to Claim 1 as amended herein.

More particularly, amended Claim 1 indicates that the lower wing not only constricts the tongue at least sideways and is shaped to help keep the device stationary in the mouth of the individual who uses it, but it is also arranged to reach the immediate proximity of the base of the mouth cavity. (This latter concept was incorporated from Claim 11, now cancelled.) This clearly distinguishes the claimed invention over Bergersen I.

Bergersen II offers nothing more relevant than Bergersen II.

DeLuke discloses a tongue training device that has nothing to do with dentistry, the invention herein, or Bergersen I or II. Further, DeLuke's "lower wing" is shaped completely different than that according to the current invention. DeLuke's wing consist of "U-shaped cups" which curve inwards and up such that the wing extends laterally beneath the tongue, whereas the wing of the current invention extends generally vertically downwards close to the base of the mouth cavity, as essentially following the shape of the lower jaw arch. DeLuke's wing is shaped

to "support the front portion of the tongue", the claimed one to constrict the tongue from its sides.

Applicants respectfully submit that since DeLuke has nothing to do with orthodontics, one skilled in the art would not combine DeLuke's teachings with a dental (occlusion guide) appliance designed to be used by children. What would be the motivation for a dentist to even start considering teachings relating to a tongue training device when wishing to come up with a novel occlusion guide appliance? The problems in orthodontics cannot be compared to ones discussed by DeLuke.

Further, orthodontics is a very "precise science," and as far as occlusion guide appliances are concerned, even seemingly minor changes in their construction may have dramatic effects on their function. As the prior art includes a large number of different kinds of occlusion guide appliances, it is counter intuitive that a person skilled in the field of orthodontics would combine the features of an orthodontic device with features of a tongue training device. Such a skilled professional would know that a change in an orthodontic device by combining one or more features of another appliance may have dramatic, unforeseen effects on its function. In practice, the context of the current situation is that no such combination can be made "just like that"; rather, careful studies on the effects of the shape of the appliance to the development of children's teeth is always required. Already this dictates that a skilled professional would not and could not simply just make such a combination as the Examiner has suggested, unless there is a clear teaching that suggests that such a combination should be done. There is no such teaching here.

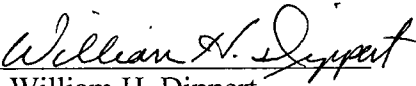
For the reasons above, Applicants submit that the invention claimed herein is not disclosed by Bergersen I or suggested by any combination of Bergersen I, Bergersen II, and/or DeLuke. The claimed device is a precise orthodontic device, and "mixing and matching" features from different devices, especially a non-orthodontic device, would not be accomplished without a clear teaching, which doesn't exist. Further, even if DeLuke were combined with either Bergersen I or Bergersen II, the result would NOT be an orthodontic appliance with such a lower wing as the invention herein comprises.

Should any changes to the claims and/or specification be deemed necessary to place the application in condition for allowance, the Examiner is respectfully requested to contact the undersigned to discuss the same.

Reconsideration and allowance of the claims herein are respectfully requested.

Respectfully submitted,

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